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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,948	06/25/2001	William P. Apps	RPC 0555 PUS	1683

33171 7590 07/22/2003

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

11

DATE MAILED: 07/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/891,948

Applicant(s)

APPS, WILLIAM P.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

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Regardless of what is stated in the written specification, the wall pylons are not just a portion of upper wall portion 36. As shown in Fig. 1, the interior portion of the wall pylon extends downwardly to connect with the base and therefore forms a portion of the lower wall portion. It seems that the height of the "uppermost portion" would have to be greater than 75% of the total height of the pylon (height from base to very top of pylon). Also, the "uppermost portion" could be 99% of the total height of the pylon.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-19 and 36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

If the "uppermost portion" is equated with the upper wall portion 36, then the height of the uppermost portion would be less than the height of interior column rather than greater than interior column height (see Fig. 10).

Typically, one having ordinary skill in the art would expect an "uppermost portion" to refer only to that portion which is at the extreme upper part of an element and thus would never refer to more than 50% of an element. In this case, "uppermost portion" must be interpreted to mean at least the upper 75% of the total wall height. The examiner believes the word "uppermost" is misused and constitutes new matter. **This is a new matter rejection.**

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Applicant could overcome this rejection by referring to this 75% or greater portion as something other than "uppermost portion" or "upper wall portion" and suggest that applicant refer to it as a "substantial portion."

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps et al. ('279) (Apps) in view of Hammett ('554) (Hammett), McGrath ('844) (McGrath) and Sauey.

Apps discloses the invention except for the internal columns appear to be the same height as the wall structure. Hammett, McGrath and Sauey teach internal columns of shorter height than the wall structure.

Hammett specifically teaches a low depth tray for beverage containers and inherently capable of supporting bottles. Hammett includes spacer members 21 and 21A in the form of interior members projecting upwardly from a interior of a wall structure, the interior members have a height less than the height of the uppermost portion (75% or more) of the second pair of opposing walls (side walls), and less than the height of pylons (upstanding pillars or columns 12), and less than the height of the beverage containers loaded in the tray. It would have been obvious to reduce the height of the interior columns in order to maintain sufficient stability while reducing weight and material costs and to provide wider access to an upper portion of a beverage container located within the pocket so that a user can grasp a larger portion of the container exterior ensuring a firm grip of the container before it is lifted from the tray.

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McGrath specifically teaches end walls of greater height than the interior columns. Insofar as the end walls are a pair of opposite walls with a length, then it would have been obvious to apply the end wall teaching of McGrath to add handles to the side walls and to increase the height of the side walls to be above the interior member height in order to enhance the grasping of the side wall, thereby enhancing handling of the tray when access to the end wall is inconvenient.

Sauey specifically teaches a low depth tray for shotgun shells and is inherently capable of supporting bottles. Sauey includes finger-like depressions 31, arcuate protuberances 32 and hemispherical end portions 34 which collectively define an interior member projecting upwardly from an interior of the wall structure and connected to the divider walls, the at least one interior member having a height less than the height of the uppermost portion of the second pair of opposed walls (side walls). it would have been obvious to reduce the height of the interior members in order to reduce weight and material cost while maintaining a means to guide and support objects placed within the compartments (pockets) of the tray.

Claims 1-10, 12-34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps et al. ('793) or Apps et al. ('002) in view of Hammett ('554) (Hammett), McGrath ('844) (McGrath) and Sauey.

The Apps references disclose the invention except for the internal columns appear to be the same height as the wall structure. Hammett, McGrath and Sauey teach internal columns of shorter height than the wall structure.

Hammett specifically teaches a low depth tray for beverage containers and inherently capable of supporting bottles. Hammett includes spacer members 21 and 21A in the form of

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McGrath specifically teaches end walls of greater height than the interior columns. Insofar as the end walls are a pair of opposite walls with a length, then it would have been obvious to apply the end wall teaching of McGrath to add handles to the side walls and to increase the height of the side walls to be above the interior member height in order to enhance the grasping of the side wall, thereby enhancing handling of the tray when access to the end wall is inconvenient.

Sauey specifically teaches a low depth tray for shotgun shells and is inherently capable of supporting bottles. Sauey includes finger-like depressions 31, arcuate protuberances 32 and hemispherical end portions 34 which collectively define an interior member projecting upwardly from an interior of the wall structure and connected to the divider walls, the at least one interior member having a height less than the height of the uppermost portion of the second pair of opposed walls (side walls). it would have been obvious to reduce the height of the interior members in order to reduce weight and material cost while maintaining a means to guide and support objects placed within the compartments (pockets) of the tray.

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All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
July 21, 2003

up·per·most

up·per·most (ˌɒpərˈmɒst) *adverb & adjective*

In the highest position, place, or rank: *finished uppermost in the standings; the uppermost balcony.*

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